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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,925	01/02/2001	Dauna R. Williams	237312-000001	1241
84310	7590	02/04/2013		
Troutman Sanders LLP The Chrysler Building 405 Lexington Avenue New York, NY 10174			EXAMINER ALVAREZ, RAQUEL	
			ART UNIT 3682	PAPER NUMBER
			NOTIFICATION DATE 02/04/2013	DELIVERY MODE ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAUNA R. WILLIAMS

Appeal 2012-006605
Application 09/752,925
Technology Center 3600

Before MICHAEL L. HOELTER, HYUN J. JUNG and
BART A. GERSTENBLITH, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal, under 35 U.S.C. § 134(a), from a rejection of claims 18-20 and 22-48. Br. 2. Claims 1-17 and 21 have been cancelled. Br. 2. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

CLAIMED SUBJECT MATTER

The disclosed subject matter relates to “creating feedback controlled productions of television episodes” in order “to incorporate audience feedback into later episodes.” Spec. 1.¹ Independent claim 18 is illustrative of the claims on appeal and is reproduced below:

18. A programmed controlled computer system comprising:
- a computer processor selectively programmed to provide an electronic query to a member of an audience for a current episode for a show, wherein said show comprises a series of episodes having a common theme and characters with subsequent episodes advancing a story line of said show, said query provided to said member by way of a multi-tier question hierarchy comprising separate tiers of questions, each question assigned to a tier based on when chronologically the response generated by the question can be integrated into said story;
 - a computer processor selectively programmed for receiving and storing in memory said feedback messages; and
 - a computer processor selectively programmed for aggregating a plurality of collected feedback messages into data and electronically analyzing said data to provide a report that is utilized in development of the story line and/or characters in one or more subsequent future episodes for said show,
- wherein said processors may be one processor or a plurality of interconnected processors.

¹ Appellant’s Specification does not provide line or paragraph numbering. Accordingly, reference will only be made to the page number.

REFERENCES RELIED ON BY THE EXAMINER

Trewitt	US 6,134,531	Oct. 17, 2000
Slaney	US 6,968,565 B1	Nov. 22, 2005
Abelow	US 2004/0177002 A1	Sep. 9, 2004

THE REJECTIONS ON APPEAL

1. Claims 18-20 and 22-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Trewitt and Abelow. Ans. 4.
2. Claims 46-48 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Trewitt, Abelow and Slaney. Ans. 9.

ANALYSIS

*The rejection of claims 18-20 and 22-45
as being unpatentable over Trewitt and Abelow*

Appellant argues claims 18-20 and 22-45 as a group.² Br. 6-8. We select independent claim 18 for review with claims 19, 20 and 22-45 standing or falling with claim 18. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011).

Claim 18 includes the limitation of a computer processor programmed to provide an electronic query to a member of an audience wherein “said

² We note that Appellant also specifically asserts that the non-final Office Action mailed December 17, 2010 failed to address the features of claims 19, 20 and 22 and therefore their rejection is improper. Br. 8. This contention has no merit as the Examiner’s non-final rejection identifies Trewitt as teaching a computer processor that electronically queries an audience so as to receive feedback “from viewers of a broadcast program, the program having different segments and using the user’s reactions over time for program variations.” Office Action mailed December 17, 2010, page 2. Appellant does not indicate how these findings, as well as others therein, do not “address the specific features [of] these claims” as Appellant asserts. Br. 8.

query provided to said member by way of a multi-tier question hierarchy comprising separate tiers of questions, each question assigned to a tier based on when chronologically the response generated by the question can be integrated into said story.” Br. 11 (Claim 18); *see also* Br. 6. The Examiner finds that Trewitt teaches most of this claim limitation (as well as the other limitations of claim 18) including a computer processor programmed for “gathering the feedback and storing it in order to use it over time in different segment[s] of the program.” Ans. 5 *referencing* Trewitt 2:2-5 and 5:39-44. More specifically, the Examiner finds that Trewitt “teaches receiving viewer feedback in response to questions about a television show and using the feedback to adjust the storyline in future episodes of the television show.” Ans. 11 *referencing* Fig. 3 and that portion of Trewitt previously referenced, *see also* Ans. 5. However, the Examiner acknowledges that “Trewitt is silent as to separate tiers of questions, based on when the chronologically responses generated by the question can be integrated into a story.” Ans. 5; *see also* Ans. 11. Here, the Examiner relies on Abelow for “structuring the query in a multi-tiered hierarchy in order to receive follow up answers” (Ans. 6) and more specifically for separating “the questions into at least three tiers, as discussed by the Appellant: prior to use, during use, and post use” (Ans. 11).

Indeed, Appellant acknowledges that Abelow teaches “probes” or customized questions separated into “pre-use, on-task, and post-use categories.” Br. 7; Abelow para. [0275]. Nevertheless, Appellant contends that Abelow does not “teach or suggest a multi-tier question hierarchy comprising separate tiers of questions, where each question is assigned to a tier based on when chronologically the response generated by the question

can be integrated into a story.” Br. 7. As indicated above, the Examiner relies on Abelow for structuring the query in a multi-tiered hierarchy (Ans. 6, 11) which Appellant acknowledges is chronologically arranged (Br. 7). However, the Examiner relies on Trewitt, not Abelow, for incorporating audience responses into a story over time. Ans. 5, 11. The Examiner also finds that Trewitt impliedly discloses arranging questions “based on when the responses can be integrated into the storyline” because “the viewer cannot respond to a question about a future episode.” Ans. 11. In view of the Examiner’s findings as to the disclosures of each reference, we do not find Appellant’s contention persuasive. *See* Ans. 11 (noting that “[o]ne cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references”) (referencing *In re Keller*, 642 F.2d 413 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091 (Fed. Cir. 1986)).

Appellant further contends that “Abelow is not directed to television shows” and that the claimed query system is “based on television production schedules.” Br. 8. Even assuming this to be the case, the Examiner relied on Trewitt, not Abelow, for disclosing a “show” (Ans. 4, 5; *see also* Trewitt’s Title “Method And Apparatus For Correlating Real-Time Audience Feedback With Segments Of Broadcast Programs”). Appellant further contends that the Examiner “does not allege that Trewitt teaches these features, nor does it” (Br. 8), but Appellant does not explain how Trewitt’s disclosure of broadcast programs does not encompass television shows.³

³ We also note that Trewitt discloses that broadcast programs include television shows. Trewitt, col. 2, ll. 48-50 (“A broadcast system **110**

Based on the record presented, Appellant's contentions are not persuasive. We sustain the Examiner's rejection of claims 18-20 and 22-45.

*The rejection of claims 46-48
as being unpatentable over Trewitt, Abelow and Slaney*

Appellant contends that independent claim 46 "recites features similar to those of claim 18 discussed above" and that the Examiner "does not allege that Slaney teaches these features, nor does it." Br. 9. As a result, according to Appellant, these claims are allowable "for at least the same reasons discussed above." Br. 9. Appellant does not otherwise dispute or contest the Examiner's reliance on Slaney for the additional rejection of claims 46-48 nor does Appellant persuasively show where the Examiner's reliance thereon is in error. Accordingly, Appellant's contentions are not persuasive and we sustain the Examiner's rejection of claims 46-48.

DECISION

The rejections of claims 18-20 and 22-48 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

MP

broadcasts a radio or television program **111** via some broadcast medium **120** to the audience **130**").